

You are receiving this periodical based upon previous specific and general contacts with the Goldstein Law Group regarding franchise law issues. We look forward to keeping you updated on the current trends in franchise court decisions around the country in both state and federal courts.

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FRANCHISE TRENDS

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Trouble in Paradise:

Golden Krust Patties, Inc., et al. v. Marilyn Bullock (E.D.N.Y., July 16, 2013)

Franchisor, a Caribbean-style fast-food restaurant chain, brought a motion for preliminary injunction against a franchisee that it alleged has breached the franchise agreement. The preliminary injunction sought to enforce a non-compete clause in the agreement, which would prohibit the franchisee from operating a similarly-themed fast-food restaurant at the franchise's location.

The District Court for the Eastern District of New York granted preliminary injunction for the franchisor and expressed the following for their jurisdiction. A showing of irreparable harm is the single most important prerequisite for the issuance of a preliminary injunction. In general, when a party violates a reasonable non-compete clause, the resulting loss of client relationships and customer good will that has built up over the years does constitute irreparable harm for the purposes of granting a preliminary injunction against the non-moving party. Here, the non-compete clause provided that for a period of two years beginning from the effective date of termination of the franchise agreement, from the date that a franchise agreement is set to expire, or from the date on which the franchisee begins complying with the non-compete clause, the franchisee shall not have any interest in any competitive business operating at the franchise location, within ten miles of the franchise location, or within five miles of any Golden Krust Caribbean Bakery & Grill location.

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Franchisor Competency, Video 4

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Franchise Law – Franchise Discrimination 1:2
- Jeff Goldstein: Franchise Lawyer



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Franchise Discrimination - Video 1 of 2



Franchise Discrimination - Video 2 of 2



Franchise Law: Fraud and Good Faith in
Franchise Law

[Be Careful Whom You Speak To: Can an Employee Grant an Exclusive Franchise?](#)

[Ronnie McLin v. Hi Ho, Inc. and John T. Guzzardo, Jr. \(La.App. 1 Cir., June 7, 2013\)](#)

A prospective franchisee of a barbeque restaurant brought suit against a franchisor and its employee, who purportedly granted the franchisee a two-year exclusive right to open the franchise within a particular town. The prospective franchisee sought, among other remedies, injunctive relief against another franchise that opened up within the city of Livingston, LA. The trial court granted summary judgment for the franchisor. The Court of Appeal of Louisiana affirmed the judgment.

Both courts ruled that the employee did not have the apparent authority to bind its employer, the franchisor, into a franchise agreement. Apparent authority is the doctrine by which an agent (here, an employee) is empowered to bind his principal (a franchisor) in a transaction (a franchise agreement), because the principal has made a manifestation to the third party (a potential franchisee) or to the community that its agent is authorized to engage in the transaction on the principal's behalf, even though the principal has not expressly delegated this authority to the agent.

Franchisor introduced testimony and an affidavit from its officer saying that the company had not granted express authority to its employee to enter into franchise agreements on the company's behalf. The courts ruled in favor of the franchisor on summary judgment because they stated that the franchisee had not introduced evidence that would dispute the franchisor's evidence. Moreover, there was nothing to show that the principal had demonstrated to the potential franchisee or to the community that it had given authority to the employee to award franchises. In other words, the principal must be the one who demonstrates to a potential franchisee that a particular employee has the authority to award a franchise. An employee who himself asserts the authority is not sufficient.

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[Partial Decertification in Collective Action Suit - Un-happy Employees of Happy's Pizza Franchise:](#)

[Medina v. Happy's Pizza Franchise, LLC \(N.D.I.L., April 2, 2012\)](#)

Plaintiffs are employees of a pizza restaurant franchisor and part of a



Franchise Law – Franchisees' Franchise Termination Damages

Franchisor's Delay in Bringing Motion for Preliminary Injunction Influences Court's Decision Not to Enforce a Non-Compete Clause Against the Franchisee:

Novus Franchising, Inc. v. Michael I. Dawson, CarMike, Inc. (8th Circuit, August 5, 2013).

In a case regarding a franchisee's breach of the franchise agreement, the U.S. District Court for the District of Minnesota entered a preliminary judgment against a franchisee to prohibit him from using the franchisor's trademarks and products in his automotive glass repair business. However, the district court refused to enforce a non-compete clause against the franchisee as part of the injunction. Franchisor appealed, and the Eighth Circuit Court of Appeals held for the franchisee. It held that the trial court did not abuse its discretion in refusing to enforce the non-compete clause, and the decision did not fall outside the range of the court's permissible choices.

The District Court focused on the factor of whether or not denial of a preliminary injunction would cause "irreparable harm" to the moving party or the franchisor in this case. The District Court found - and the Court of Appeals affirmed - that the long delay (a period of seventeen months) between the time when the franchisee stopped paying royalties and the time the franchisor finally sought injunctive relief was long enough to rebut any inference of irreparable harm that the franchisor might have suffered.

collective action against franchisor for claims under the Fair Labor Standards Act (FLSA) relating to unpaid overtime wages as well as claims arising under supplemental Illinois law. The trial court certified the case as a collective action with the original plaintiffs and authorized notice to similarly situated employees of the same franchisor. For claims made under the FLSA, plaintiffs must "opt-in" to a collective action. This is in contrast to non-FLSA claims, where similarly-situated plaintiffs are automatically included upon certification of the case as a class action and where Plaintiffs would chose to "opt-out" of a case.

Here, after the trial court certified the case as a collective action, at least 254 plaintiffs opted into the suit. Plaintiffs then moved for partial decertification of the opt-in plaintiffs. Out of the 254 opt-in plaintiffs, a majority worked for franchisor restaurants in Michigan, others for franchises in Ohio, and some for franchises in Illinois. Plaintiffs moved essentially to split the opt-in plaintiffs into different classes based on location and to transfer plaintiffs into courts of their respective regions. The District Court for the Northern District of Illinois granted plaintiff's motion and partially decertified the opt-in plaintiffs. Plaintiffs who had not worked in franchises in Illinois were transferred to their respective districts in Michigan or in Ohio.

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Tidying Up - Post-arbitration Award of Attorney Fees to a Prevailing Party:

Auwah v. Coverall North America, Inc. (D. Mass., June 15, 2011)

Franchisee plaintiffs/claimants of a cleaning service franchise prevailed in their arbitration claim against franchisor under the Massachusetts Independent Contractor Statute and were awarded damages. In a U.S. district court, plaintiffs sought to recover attorney fees, which were not awarded to either side at arbitration. The district court ruled that silence in arbitration proceedings regarding attorney fees did not constitute a ruling against an award of fees. In deciding whether or not to award attorney fees to one side, a court must determine whether an awarding of fees is warranted as well as the amount of fees that would be appropriate to award. The court also stated that the party seeking an award of attorney fees bears the burden of establishing and documenting an accurate representation of the hours worked and of the hourly rates charged by the attorneys throughout litigation. The court ruled that plaintiffs/claimants as the prevailing party were entitled to recover attorneys' fees and costs under Massachusetts General Laws chapter 149, section 150, and it awarded fees to the plaintiffs/claimants totaling \$34,119.00.

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